

2 Advanced Broadband Service Agreement

This Advanced Broadband Service Agreement (the "Agreement") is entered into as of February 10, 2009 (the "Effective Date"), by and between Pasco County Board of County Commissioners ("Customer"), with offices located at 13921 7TH ST, Dade City FL 33525 and the Advanced Broadband Services division of Bright House Networks, LLC ("BHN"), with offices located at 700 Carillon Parkway, Suite 5, St Petersburg FL 33716. In consideration of the mutual promises and agreements made herein and intending to be legally bound, the parties agree as follows:

1. **SERVICE.** Subject to the terms and conditions of this Agreement, BHN shall provide Customer with a dedicated "Dedicated Access" service connection between Customer's facility and BHN's (or a BHN affiliate's) facility as further described on Exhibit A attached hereto (the "Service"). BHN shall use commercially reasonable efforts to provide the Service 7 days a week, 24 hours a day, excluding scheduled maintenance, required repair and events beyond BHN's reasonable control. BHN's provision of the Service is subject to availability.
2. **INSTALLATION.** Customer shall obtain and maintain throughout the Term (as defined in Section 5 below) such consents (including without limitation landlord and land owner consents) as are necessary to timely permit, and shall timely permit, BHN personnel to install, deliver, operate and maintain the Service and Equipment as contemplated herein at Customer's facilities. Customer shall permit BHN to access the Customer facilities at any time as needed to install, configure, upgrade, maintain or remove the Equipment and other service components collocated at Customer's facilities. Customer shall make and maintain throughout the Term all site preparations necessary to permit the installation, maintenance, and operation of the Service and any Equipment (as defined below) as specified by BHN. Provided that Customer properly performs all necessary site preparation and provides BHN with all required consents, BHN shall use commercially reasonable efforts to install the Service in accordance with a mutually agreed upon schedule. BHN shall provide Customer with a completion notice ("Completion Notice") upon completion of the installation of the Service. Interconnection of the Service and Equipment with Customer's equipment will be performed by Customer.
3. **SUPPORT & MAINTENANCE.** BHN shall use commercially reasonable efforts to maintain the BHN provided and installed cabling, routers and other BHN-installed equipment, if any, (collectively, the "Equipment") used by BHN to provide the Service. Performance levels are outlined in Appendix 1: Bright House Network Operations SLA. BHN shall provide a telephone number and email address for inquiries and remote problem support for the Service. All such Customer support shall be provided to Customer's help desk personnel only. Customer is responsible for interfacing with its employees and end users. In no event shall BHN be responsible for providing such support for any network, equipment or software not provided and installed by BHN under this Agreement or for issues or problems beyond its direct control. Customer agrees to provide routine operational Service support for Equipment and service components collocated at Customer's facility, including without limitation by performing reboots, as requested by BHN.
4. **CUSTOMER OBLIGATIONS.** Customer's use of the Service (including all content transmitted via the Service) shall comply with all applicable laws and regulations, the terms of this Agreement, and any Terms of Use (which are incorporated herein by this reference). "Terms of Use" means all Service policies, including without limitation acceptable use policies, and other terms and conditions established by BHN and available on the BHN web site, as may be modified from time to time by BHN. Customer agrees not to resell or make any use of the Service other than for Customer's internal business purposes. Customer agrees to use the Service solely for data services. Customer shall maintain the Equipment free and clear of all liens and encumbrances and shall be responsible for loss or damage (except for that caused by BHN or by Force Majeure) to the Equipment while at Customer's facilities. As between the parties, Customer is solely responsible for (a) all use (whether or not authorized) of the Service, which use shall be deemed Customer's use for purposes of this Agreement; and (b) all content that is stored or transmitted via the Service. Customer shall not upload, post, transmit or otherwise make available on or via the Service any material (including any message or series of messages) that violates or infringes in any way upon the rights of others, that is unlawful, threatening, abusive, obstructive, harassing, libelous, invasive of privacy or publicity rights, that in the circumstances would be obscene or indecent, that constitutes hate speech, that is otherwise offensive or objectionable, or that encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any law or regulation. BHN may remove, or demand the removal of, content that in its judgment violates these standards. Customer agrees to conform its equipment and software to BHN then-current network specifications and system requirements for the Service.

5. **TERM.** The Agreement shall be in effect for the Initial Term of Service set forth on Exhibit A, and unless terminated earlier in accordance with this Agreement, shall thereafter automatically renew on an annual basis unless either party notifies the other party at least ninety (90) days prior to the expiration of the then-current term of such party's intent not to renew (the Initial Term and any renewal term collectively referred to as the "Term").

6. **PASCO COUNTY BUDGET APPROPRIATIONS** The funding of this Contract is subject to an annual appropriation by PASCO COUNTY. The consideration paid to BHN for any fiscal year pursuant to this Contract shall not exceed the amount appropriated by PASCO COUNTY pursuant to its budget process for that fiscal year; provided, however, PASCO COUNTY shall reasonably attempt to in good faith annually budget or appropriate an amount reasonably calculated to fund this Contract. BHN shall assist PASCO COUNTY in making reasonable budget projections for the purpose of determining the amount to be budgeted or appropriated by PASCO COUNTY to fund this Contract for each fiscal year hereunder.

7. **NEW SITES AND DEACTIVATION OF EXISTING SITES.** As additional 100 Mb or 1 Gig sites are required by the Customer through the BHN link, BHN will provide service drops as requested at the same rate as the initial service rate as stated in Exhibit A. Installation charges will also be waived. If construction is required to service the new sites, BHN will pay up to \$5,000.00 in construction costs for a 10Mb site and \$10,000.00 for a 100Mb site provided these sites are added during the first year of the contract. Anything above these construction amounts and sites added during the last 12 months of the contract will be negotiable. If the customer chooses to deactivate any of the sites listed in Exhibit A during the term of this agreement there will be no penalty assessed to the Customer by BHN.

8. **PAYMENT.** Customer agrees to pay BHN the one-time Service installation fee and monthly recurring Service fees (collectively the "Service Charges") set forth on Exhibit A in accordance with the following payment terms: Service Charges will be billed to Customer monthly in accordance with BHN's regular billing schedule and are payable within forty-five (45) days after the date of invoice. Customer shall be responsible for all use, sales and other taxes and governmental charges applicable to the Service (which taxes and charges are not included in the Service Charges), except for taxes payable on BHN's net income. BHN shall have the right to increase Service Charges after the Initial Term upon ninety (90) days advance written notice to Customer. BHN may charge a late fee for all overdue amounts. The late fee will be the lesser of 1 1/2% or the highest rate chargeable by law. Customer shall also be responsible for all costs of collection (including reasonable attorneys' fees) to collect overdue amounts. In addition to the foregoing, and all other available remedies, BHN may discontinue Customer's access to the Service in whole or in part, until such overdue amounts, together with interest, are paid in accordance with applicable Florida law. BHN may require a security deposit, letter of credit, advance payment for Service or other reasonable assurances of payment from Customer.

9. **PROPRIETARY RIGHTS AND CONFIDENTIALITY.** (a) BHN's Proprietary Rights. All materials, including, but not limited to, any Equipment (including related firmware), software, data or information developed or provided by BHN, any identifiers or passwords used to access the Service or otherwise provided by BHN, and any know-how, methodologies or processes including, but not limited to, all copyrights, trademarks, service marks, trade names, patents, trade secrets, any other proprietary rights inherent therein and appurtenant thereto, used by BHN to provide the Service (collectively "BHN Materials") shall remain the sole and exclusive property of BHN or its suppliers. Customer shall acquire no interest in the BHN Materials by virtue of the payments provided for herein. Customer may use the BHN Materials solely for Customer's use of the Service. Customer may not reproduce, modify or distribute the BHN Materials, or use them for the benefit of any third party. All rights in the BHN Materials not expressly granted to Customer are reserved to BHN. Customer will not open, alter, misuse, tamper with or remove the Equipment as and where installed by BHN, and will not remove any markings or labels from the Equipment indicating BHN (or its suppliers) ownership or serial numbers. (b) Confidentiality. Customer agrees to maintain in confidence, and not to disclose to third parties or use, except for such use as is expressly permitted herein, the BHN Materials and any other information and materials provided by BHN in connection with this Agreement that are identified or marked as confidential or are otherwise reasonably understood to be confidential. (c) Software. If software is provided to Customer hereunder, BHN grants Customer a limited, non-exclusive and non-transferable license to use such software, in object code form only, solely for the purpose of using the Service for Customer's internal business purposes during the Term.

10. **MONITORING AND MODIFICATIONS.** BHN shall have the obligation, to monitor traffic and content on its network, in its sole discretion, including through the use of automatic content filters (including without limitation spam, virus, and adult language sniffers and filters). BHN shall have the right, but not the obligation, to upgrade, modify and enhance the Equipment (including related firmware) and the Service and take any action that BHN deems appropriate to protect the Service and its facilities. BHN also shall have the right to add to, modify or delete any provision of the Terms of Use or any Service descriptions. BHN will

notify Customer of any material adverse change in the Terms of Use or Service descriptions by posting notice of such change on the BHN web site or by email. Customer's continued use of the Service after such notice shall constitute Customer's acceptance of such change.

11. TERMINATION. Either party may terminate this Agreement upon ninety (90) days written notice of the other party's material breach, provided that such material breach is not cured within such ninety (90) day period. This Agreement may be terminated by either party upon written notice to the other party for cause in the event that:

The other party makes an assignment for the benefit of creditors;

- (a) The other party becomes insolvent or commences voluntary proceedings under any bankruptcy or insolvency law. Recurring fee is not paid and/or is 90 days past due.
- (b) Involuntary proceedings are instituted against the other party under any bankruptcy or insolvency law and such proceedings are not terminated within ninety days, or
- (c) A receiver is appointed for such other party; and, the other party fails to perform any material provision of this Agreement and does not cure such failure within a period of sixty days after receipt of written notice specifying such failure and stating an intention to terminate this Agreement if such failure is not cured.

In addition, in the event that Customer fails to comply with any applicable laws or regulations, the terms of this Agreement, or the Terms of Use, BHN may suspend or discontinue Customer's Service in whole or in part with advance notice. In the event of a suspension, BHN may require a reconnect charge to restart the suspended Service. Upon the termination or expiration of this Agreement: (a) BHN's obligations hereunder shall cease; (b) Customer promptly shall pay all amounts due and owing to BHN for Service delivered prior to the date of termination or expiration and any applicable fee, if any; (c) Customer promptly shall cease all use of any software provided by BHN hereunder, and shall return such software to BHN; and (d) Customer shall return to BHN or permit BHN to remove, in BHN's sole discretion, the Equipment in the same condition as when received, ordinary wear and tear excepted. Customer shall be responsible for reimbursing BHN for the repair or replacement, at BHN's discretion, of any Equipment not returned in accordance with this section. In addition, notwithstanding anything to the contrary herein, upon early termination of this Agreement by Customer, Customer shall promptly pay BHN a termination fee equal to the Service Charges that would have been due for the remainder of the Initial Term or the then-current renewal term, as applicable, and any unpaid portion of the Installation Fee set forth on Exhibit A. The foregoing shall be in addition to any other rights and remedies that BHN may have under this Agreement or at law or equity relating to Customer's material breach.

12. EXPENSES. Except as otherwise described herein, each of the parties shall pay its own costs and expenses associated with the transactions contemplated by this Agreement.

13. RELATIONSHIP OF PARTIES. Nothing in this Agreement shall be construed to create a joint venture, partnership or agency relationship between the parties. Neither party is authorized to represent, bind, obligate, or contract on behalf of the other party, nor is this Agreement intended to create an exclusive relationship between the parties.

14. INDEMNIFICATION. To the extent provided for under Florida law, Customer agrees to defend, indemnify and hold harmless BHN, its affiliates, its service providers and suppliers and their respective officers, directors, employees and agents, from and against all claims, liabilities, damages and expenses, including attorneys' and other professionals' fees, arising out of or relating to (i) the use of the Service, including but not limited to a breach of Section 4 herein; or (ii) personal injury or property damage caused by the negligence or willful misconduct of Customer or its employees or agents. Nothing in this section shall be construed as a waiver of the Customer's sovereign immunity.

15. DISCLAIMER OF WARRANTY. CUSTOMER ASSUMES TOTAL RESPONSIBILITY FOR USE OF THE SERVICE AND THE INTERNET AND ACCESSES THE SAME AT ITS OWN RISK. BHN EXERCISES NO CONTROL OVER AND HAS NO RESPONSIBILITY WHATSOEVER FOR THE CONTENT TRANSMITTED OR ACCESSIBLE THROUGH THE SERVICE OR THE INTERNET OR ACTIONS TAKEN ON THE INTERNET AND BHN EXPRESSLY DISCLAIMS ANY RESPONSIBILITY FOR SUCH CONTENT OR ACTIONS. EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE SERVICE AND RELATED EQUIPMENT AND/OR OTHER MATERIALS USED IN CONNECTION WITH THE SERVICE, IF ANY, ARE PROVIDED WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NONINFRINGEMENT, SYSTEM INTEGRATION, DATA ACCURACY, QUIET ENJOYMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO ADVICE OR INFORMATION GIVEN BY BHN, ITS AFFILIATES OR ITS CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES SHALL CREATE ANY WARRANTY. BHN DOES NOT REPRESENT OR WARRANT THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS, WILL PREVENT UNAUTHORIZED ACCESS BY

THIRD PARTIES, WILL BE UNINTERRUPTED, SECURE OR ERROR FREE OR THAT ANY MINIMUM TRANSMISSION SPEED IS GUARANTEED AT ANY TIME. IN ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES THAT TRANSMISSIONS OVER THE INTERNET MAY NOT BE SECURE. CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT ANY MATERIAL AND/OR DATA UPLOADED, DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT CUSTOMER'S OWN DISCRETION AND RISK AND THAT CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE UPLOADING, DOWNLOADING OR OTHER TRANSMISSION OF SUCH MATERIALS AND/OR DATA. IN ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES THAT BHN'S THIRD PARTY SERVICE PROVIDERS DO NOT MAKE ANY WARRANTIES TO CUSTOMER UNDER THIS AGREEMENT, AND BHN DOES NOT MAKE ANY WARRANTIES ON BEHALF OF SUCH SERVICE PROVIDERS UNDER THIS AGREEMENT, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SYSTEM INTEGRATION, DATA ACCURACY OR QUIET ENJOYMENT.

16. LIMITATION OF LIABILITY. IN NO EVENT SHALL BHN BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF WHETHER BHN HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE AGGREGATE LIABILITY OF BHN TO CUSTOMER FOR ANY REASON AND ALL CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT (INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE) AND STRICT PRODUCT LIABILITY) SHALL BE LIMITED TO THE FEES PAID BY CUSTOMER UNDER THIS AGREEMENT IN THE SIX (6) MONTHS PRECEDING THE DATE THE CLAIM ARISES. IN NO EVENT SHALL BHN'S AFFILIATES, THIRD PARTY SERVICE PROVIDERS OR SUPPLIERS HAVE ANY LIABILITY TO CUSTOMER HEREUNDER.

17. NOTIFICATIONS. Customer's privacy interests, including Customer's ability to limit disclosure of certain information to third parties, are addressed by, among other laws, the Federal Cable Communications Act (the "Cable Act") and the Electronic Communications Privacy Act. Personally identifiable information that may be collected, used or disclosed in accordance with applicable laws is described in the Subscriber Privacy Notice provided by BHN in writing. In addition to the foregoing, Customer hereby acknowledges and agrees that BHN may disclose Customer's and its employees' personally identifiable information as required by law or regulation or by the American Registry for Internet Numbers ("ARIN") or any similar agency. In addition to actions and disclosures specifically authorized by law or statute or authorized elsewhere in this Agreement, BHN shall have the right (except where prohibited by law notwithstanding Customer's consent), but not the obligation, to disclose any information to protect its rights, property and/or operations, or where circumstances suggest that individual or public safety is in peril. Customer hereby consents to such actions or disclosures.

18. FORCE MAJEURE. BHN shall have no liability to Customer hereunder due to circumstances beyond its control, including, but not limited to, acts of God, terrorism, flood, fiber cuts, acts or omissions of other carriers, natural disaster, regulation or governmental acts, fire, civil disturbance, strike, weather, any unauthorized access to or destruction or modification of the Service, in whole or in part, any failure of heat, air conditioning, or power supply, or act or failure to act of Customer or any third party using the Service.

19. REGULATORY AND LEGAL CHANGES; TARIFFS. In the event of any change in applicable law, regulation, decision, rule or order, including without limitation any increase in universal service fees or other government imposed charges, that increases the costs or other terms of delivery of Service to Customer, Customer acknowledges and agrees that BHN may pass through to Customer any such increased costs. Further, in the event that BHN is required to file tariffs with the appropriate regulatory agency or otherwise publish rates in accordance with regulatory agency rules or policies respecting the delivery of the Service or any portion thereof, then the terms set forth in the applicable tariff or published rates shall govern BHN delivery of, and Customer's consumption or use of, the Service. In addition, if BHN determines that offering or providing the Service, or any part thereof, has become impracticable for legal or regulatory reasons or circumstances, then BHN may terminate this Agreement as to any or all of the Service without liability by giving Customer ninety (90) days prior written notice (or such shorter notice as is required by law or regulation) of such determination.

20. ENTIRE AGREEMENT. This Agreement, including without limitation all exhibits that are attached hereto and incorporated herein by this reference, sets forth the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous written or oral agreements or representations between the parties with respect hereto. In the event that BHN permits a Customer to use its own standard purchase order form to order the Service, the parties hereby acknowledge and agree that the terms and conditions hereof shall prevail notwithstanding any variance with the terms and conditions of

any purchase order submitted by Customer, and any different or additional terms contained in such purchase order shall have no force or effect.

21. **MISCELLANEOUS.** This Agreement shall be governed and construed in accordance with the laws of the State of Florida, excluding its conflicts of law principles. In the event that any portion of this Agreement is held to be invalid or unenforceable, the invalid or unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties set forth herein, and the remainder of this Agreement shall remain in full force and effect. No waiver of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default. Customer may not assign this Agreement without the prior written consent of BHN, and any assignment in violation of this Section shall be null and void. BHN may assign its rights and obligations under this Agreement, including without limitation, in whole or in part, to any Bright House Networks, LLC affiliated party without the prior written approval of or notice to Customer. Customer shall make no press release, public announcement or other public statements regarding this Agreement without BHN's prior written consent. All claims under this Agreement must be initiated not later than two years after the claim arose. There are no third party beneficiaries to this Agreement. Customer understands and agrees that, regardless of any such assignment, the rights and obligations of BHN herein may accrue to, or be fulfilled by, any BHN affiliate. The parties to this Agreement are independent contractors. Any notice under this Agreement shall be given in writing and shall be deemed to have been given when actually received by the other party. Notices shall be delivered to Customer and BHN at the respective addresses set forth above, or to such other address as is provided by one party to the other in writing. The provisions of Sections 6, 7, 9, 10, 11, 12 and 17 shall survive the termination or expiration of this Agreement. No modification of any provision of this Agreement shall be valid unless set forth in a written instrument signed by both parties. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Notwithstanding anything herein to the contrary, any party to this Agreement (and each employee, representative, or other agent of such party) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transaction and all materials of any kind (including opinions and other tax analyses) that are provided to the party relating to such tax treatment and tax structure.

CUSTOMER:

By: *Jack Mariano*
Name: JACK MARIANO
Title: CHAIRMAN
Date: APPROVED



BHN:

By: *Allen K. Smith*
Name: Allen K. Smith
Title: Vice President Business Solutions
Date: 1/21/09